REMARKS

Claims 61 and 77 have been amended. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

Contingent Remarks in the Event Withdrawal is Denied

As to the Objections in the claims, though not believed necessary, Applicant makes the present Amendments to clarify that marking of "breast tissue" is done, to change "arcuate portions" to "arc segments" and to change "compressible" to "compressed upon itself" (see paragraph 48 of published U.S. Application No. **20040097981**). In view of the teachings of the specification, Applicant believes it is unnecessary to add any additional language. Symmetry of verbiage is simply unnecessary here, where it is clear from the specification that unfolding does not require folding in the sense that a creased fold necessarily forms. Withdrawal of the objections is respectfully requested.

As to Section 103 rejections, the Office Action has ignored a number of features in the independent and in the dependent claims (see e.g., features in dependent claims 62, 63 and 68) that simply are absent from Hoyns.

As to the assertion by the Office Action that "the applicant has not disclosed a clip having first ends projecting away from the second ends provides an advantage, is used for a particular purpose, or solves a stated problem and it appears the prior art clip having first ends projecting towards the second ends would perform equally as well," this is a factual finding that is not only wrong, but it is legally irrelevant. With reference to published U.S. Application No. **20040097981, t**he Office has ignored the teachings in paragraph 57, 60, 80, the claims as filed, among others. All of these address the problem solved by the Applicant's claimed invention. Even if the Office's fact finding was correct, the law does not support the position taken by the Office.

It has long been the law that, even when a number of species is disclosed, without preference for one claimed, this is not to diminish the invention. Cases such as ***Hunt v. Treppschuh***, 187 USPQ 426 (C.C.P.A. 1975) are to this same effect. In ***Snitzer v. Etzel***, 175 USPQ 108, 111 (C.C.P.A. 1972), the Court similarly ruled, and stated:

> Whether it is labeled "discovery" or "speculation," appellant's conception of trivalent ytterbium as a laser-active material is no less his own, no less original, no less important technologically, and, on this record, earlier than appellees'. His constructve reduction to practice by filing a patent application disclosing the conception and setting in motion the steps by which the public will be apprised of the discovery is in no way diminished if the conception is characterized as "speculation" or if other related conceptions turn out to be practically or technically unsound.

The Office Action is entirely contradictory to the policy of this line of cases, and is without legal support.

The Office Action also ignores that an election requirement was made here. Applicants necessarily have been forced through prosecution to single out the particular species of Figs. 16G, 16I and 16J. The Office Action has set forth no authority for the position now asserted.

In short, reliance upon the rejection under Hoyns is appealable error. The rejection based upon Hoyns must be withdrawn as to all claims, and the application allowed.

CONCLUSIONS

In view of Applicant's remarks, the Examiner's previously presented rejections are believed to be rendered moot. Accordingly, Applicant submits that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 50-1097 for any fee which may be due.

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Eric M. Dobrusin
Registration No. 33,867
Dobrusin & Thennisch PC
29 W. Lawrence Street, Suite 210
Pontiac, MI 48342
248-292-2920
edobrusin@patentco.com
Customer No. 25,215